

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. **02001-0906-PL-252**

DAISY COWAN,)
)
 Plaintiff,)
)
 v.)
)
DAWN FOOD PRODUCTS, INC.,)
)
 Defendant.)

COMPLAINT

For her complaint against defendant Dawn Food Products, Inc. ("Dawn Foods"), plaintiff Daisy Cowan alleges as follows.

THE PARTIES

1. Plaintiff Cowan is an individual who resides in Fort Wayne, Indiana. Plaintiff is a former employee of Dawn Foods.

2. On information and belief, Dawn Foods is a Michigan corporation with its principal place of business located in Jackson, Michigan. Dawn Food's business activities include the operation of manufacturing facilities, including one located in Ossian, Indiana, at which Cowan was employed. On information and belief, Dawn Foods is licensed to do business in the State of Indiana.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over defendant because defendant resides in the State of Indiana, transacts business in the State of Indiana, and the wrongs complained of herein occurred in the State of Indiana.

4. Venue is proper in this Court on grounds that, among others, plaintiff resides in this judicial district and a substantial part of the events and omissions giving rise to Cowan's claims occurred within this judicial district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. On or about June 5, 2008, and within 300 days of the discriminatory conduct of which Cowan complains, Cowan filed a charge of race discrimination with the United States Equal Employment Opportunity Commission (the "EEOC"), through the Fort Wayne Metropolitan Human Relations Commission, which charge was lodged against Dawn Foods. (A copy of Cowan's June 5, 2008 Charge of Discrimination is attached hereto as Exhibit A).

6. On or about August 19, 2008, and within 300 days of the discriminatory conduct of which Cowan complains, Cowan filed a second charge of discrimination with the United States Equal Employment Opportunity Commission (the "EEOC"), through the Fort Wayne Metropolitan Human Relations Commission, which was lodged against Dawn Foods. Cowan's second charge of discrimination alleged race discrimination and unlawful retaliation. (A copy of Cowan's August 19, 2008 Charge of Discrimination is attached hereto as Exhibit B).

7. On or about March 27, 2009, the EEOC issued Cowan Notices of Right to Sue on her June 5, 2008, and August 19, 2008 Charges of Discrimination. (Copies the EEOC's Notices of Right to Sue on Cowan's Charges of Discrimination are attached hereto as Exhibits C and D). Cowan received the Notices of Right to Sue some days after issuance by the EEOC.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

8. Cowan is black.

9. Cowan is a former employee of Dawn Foods. She was hired in 2006. During her

tenure at Dawn Foods, Cowan served as a laborer in production.

10. During her tenure with Dawn Foods, Cowan performed to the reasonable expectations of Dawn Foods.

11. On a number of occasions during her tenure, Cowan was treated unfairly and improperly disciplined due to the racial animus of coworkers and supervisors. Cowan was subjected to a racially hostile work environment by coworkers and supervisors. She complained, but Dawn Foods failed to adequately address or remedy the hostile work environment.

12. In addition, Cowan was treated less favorably than white coworkers in that she was improperly disciplined and denied promotions, unlike white employees who engaged in like behavior, but were not disciplined, and who received promotions when Cowan was the more qualified candidate.

13. During her tenure, Cowan repeatedly complained to management that she was being subjected to a racially hostile environment and that she was being subjected to less favorable treatment because of her race.

14. Cowan's complaints about the race discrimination to which she was being subjected culminated in her filing a charge of race discrimination against Dawn Foods in June 2008.

15. Shortly after filing her charge of discrimination, Dawn Foods terminated Cowan's employment.

COUNT I
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

16. Cowan hereby incorporates paragraphs 1-15 of her complaint as if set forth fully

herein.

17. Dawn Foods is an employer as defined under Title VII of the Civil Rights Act of 1964, as amended.

18. Cowan is black.

19. Cowan is an employee as defined under Title VII of the Civil Rights Act of 1964, as amended.

20. While employed by Dawn Foods, Cowan was subjected to a racially hostile work environment by coworkers and supervisors.

21. Cowan complained to management about the racially hostile work environment to which she was being subjected, but Dawn Foods failed to adequately address Cowan's complaints and failed to eliminate the racially hostile work environment to which Cowan was subjected.

22. In addition, Cowan was treated less favorably than non-black employees. Among other adverse employment actions, Cowan was denied promotions to positions for which she was the most qualified candidate, and the positions were filled by less qualified white employees.

23. Cowan exercised her statutory right to complain about the race discrimination to which she was being subjected. Cowan complained to Dawn Foods and, eventually, filed a charge of race discrimination against Dawn Foods.

24. On August 18, 2008, Dawn Foods terminated Cowan's employment. Cowan's termination was an act in furtherance of the racially hostile work environment to which Cowan was subjected, was motivated by racial animus, and was in retaliation for Cowan's having exercised her statutory rights to complain about the race discrimination to which she was

subjected.

25. As a direct and proximate consequence of Dawn Foods's unlawful discrimination and retaliation against Cowan, Cowan has suffered lost pay, lost fringe benefits, and other pecuniary losses, and has suffered emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, entitling Cowan to an award of compensatory and equitable damages.

26. Dawn Foods's conduct was willful, malicious and intentional, entitling Cowan to an award of punitive damages.

WHEREFORE, plaintiff Daisy Cowan requests that this Court enter judgment in her favor and enter an Order:

- a. Awarding her all available compensatory and equitable damages;
- b. Awarding her punitive damages;
- c. Awarding her costs, prejudgment interest, and attorneys fees; and
- d. Awarding her such other and further relief as may be appropriate.

Dated: June 26, 2009

Respectfully submitted,



R. Mark Keaton (20530-02)

P.O. Box 11208

Ft. Wayne, Indiana 46856

Telephone: (260) 467-1414

Attorney for Plaintiff Daisy Cowan

EEOC Form 5 (501)

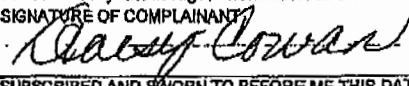
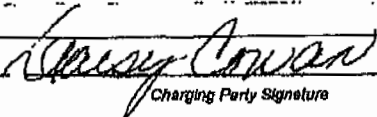
CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: <input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC Agency(ies) Charge No(s): EC-0117-A8 24D-2008-00373	
City of Fort Wayne Metro Human Relations Commission and EEOC State or local Agency, if any			
Name (Indicate Mr., Ms., Mrs.) Daisy Cowan		Home Phone (incl. Area Code) (260) 441-9594	Date of Birth 05-02-1951
Street Address City, State and ZIP Code 8216 Bridgeway Circle Apt 1b, Fort Wayne, IN 46816			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name DAWN FOODS		No. Employees, Members 15 - 100	Phone No. (Include Area Code) (260) 622-8216
Street Address City, State and ZIP Code 1720 Baker Drive, Ossian, IN 46777			
Name 		No. Employees, Members 	Phone No. (Include Area Code)
Street Address City, State and ZIP Code 			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)		DATE(S) DISCRIMINATION TOOK PLACE Earliest 02-14-2008 Latest 05-27-2008 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is inserted, attach extra sheet(s)): I am a qualified individual who has been working for Dawn Foods since November of 2006. I feel that I am working in a discriminatory environment. Jobs that I have sought within the company have been given to white employees with less seniority than I have. I have been experiencing problems with a white co-worker, Kim Hopkins, who has complained of me to management. I have also complained of Kim to management. I believe Kim's complaints are taken more seriously than mine and that management completely disregards my complaints. Specifically, on May 27, 2008 Kim, another white co-worker, and I exchanged words while working on the line. Kim and this co-worker accused me of threatening to beat them up and they talked to the supervisor. I did not do this but my supervisor did not listen to me when I tried to defend myself. For these reasons I believe that I have been discriminated against on the basis of my race, black, in violation of Title VII of the Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT 	
Date Jun 05, 2008  Charging Party Signature		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

Exhibit A

EEOC Form 5 (501)

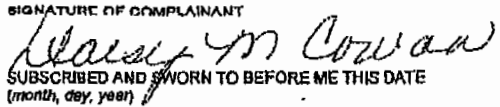
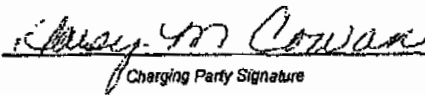
CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input checked="" type="checkbox"/> FEPA EC-0163-A8 <input checked="" type="checkbox"/> EEOC 24D-2008-00502	
City of Fort Wayne Metro Human Relations Commission and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) Ms. Daisy Cowan		Home Phone (Ind. Area Code) (260) 461-9594	Date of Birth 05-02-1951
Street Address City, State and ZIP Code 8215 Bridgeway Circle, Apt 1b, Fort Wayne, IN 46816			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name DAWN FOODS		No. Employees, Members 15 - 100	Phone No. (Include Area Code) (260) 622-6216
Street Address City, State and ZIP Code 1720 Baker Drive, Ossian, IN 46777			
Name 		No. Employees, Members 	Phone No. (Include Area Code)
Street Address City, State and ZIP Code 			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 08-18-2008 08-18-2008 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). I am a qualified individual who had been working for Dawn Foods since November 2006 until I was "laid off" on August 18, 2008. My supervisor told me that my benefits would be stopping and I had to turn in my badge and uniform. I was also escorted off of the premises. Because of these actions by my employer, I do not believe this is a lay off; I believe that I have been terminated and my employer is using this lay off as an opportunity to retaliate against me. In June of 2008, I filed a charge of discrimination with the Equal Employment Opportunity Commission. I believe the charge of discrimination is the motivating factor behind my lay off. For these reasons I believe I have been retaliated against for filing a charge of discrimination against my employer. This is in violation of Title VII of the Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Aug 19, 2008  Date Charging Party Signature			

Exhibit B

EEOC Form 181-R (3/82)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Daley Cowan
 8215 Bridgeway Circle, Apt 1b
 Fort Wayne, IN 46816

From: Indianapolis District Office
 101 West Ohio St
 Suite 1900
 Indianapolis, IN 46204

☐ On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
24D-2008-00373	Alvin E. Hines, Enforcement Supervisor	(317) 226-5082

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- ☒ More than 180 days have passed since the filing of this charge.
- ☐ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- ☒ The EEOC is terminating its processing of this charge.
- ☐ The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- ☐ The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- ☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Danny G. Harter,
Director

MAR 27 2009

(Date Mailed)

Enclosures(s)

cc: Richard P. Winegardner
 Attorney at Law
 BARNES & THORNBURG
 11 South Meridian St.
 Indianapolis, IN 46204

R. Mark Keaton
 Attorney at Law
 P.O. Box 11208
 Fort Wayne, IN 46856

Exhibit C

EEOC Form 161-R (3/88)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Daley Cowan
8215 Bridgeway Circle, Apt 1b
Fort Wayne, IN 46816

From: Indianapolis District Office
101 West Ohio St
Suite 1900
Indianapolis, IN 46204



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (20 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

24D-2008-00502

Alvin E. Hines,
Enforcement Supervisor

(317) 226-5082

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.



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On behalf of the Commission



Danny G. Harter,
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11 South Meridian St.
Indianapolis, IN 46204

R. Mark Keaton
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P.O. Box 11208
Fort Wayne, IN 46856

Exhibit D